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JUL 09 2021

Chief Judge Ricardo S. Martinez

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
SAM BROOKS,
Defendant

NO. CR20-215RSM

PLEA AGREEMENT

The United States of America, by and through Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Thomas M. Woods, Assistant United States Attorney for said District, Defendant Sam Brooks and Defendant's attorney, Michele Shaw, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c).

1. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in the Indictment:

a. Interference with Railroad Signaling System, as charged in Count 1, in violation of Title 18, United States Code, Section 1992(a)(5), (a)(10), (c)(1), and Section 2.

1 By entering a plea of guilty, Defendant hereby waives all objections to the form of
2 the charging document. Defendant further understands that before entering any guilty
3 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
4 may be used by the United States in a prosecution for perjury or false statement.

5 **2. Elements of the Offense.** The elements of the offense to which Defendant
6 is pleading guilty are as follows:

7 a. First, the defendant knowing and without lawful authority and
8 permission did, conspire to, or attempt to, impair the operation of a railroad signal
9 system;

10 b. Second, the conduct was against and affecting a railroad carrier
11 engaged in interstate or foreign commerce.

12 **3. The Penalties.** Defendant understands that the statutory penalties
13 applicable to the offense to which Defendant is pleading guilty are as follows:

14 a. For the offense of Interference with Railroad Signaling System, as
15 charged in Count 1: A maximum term of imprisonment of up to 20 years, a fine of up to
16 \$250,000, a period of supervision following release from prison of up to 3 years, and a
17 mandatory special assessment of \$100 dollars. If a probationary sentence is imposed, the
18 probation period can be for up to five (5) years.

19 Defendant understands that supervised release is a period of time following
20 imprisonment during which Defendant will be subject to certain restrictive conditions and
21 requirements. Defendant further understands that, if supervised release is imposed and
22 Defendant violates one or more of the conditions or requirements, Defendant could be
23 returned to prison for all or part of the term of supervised release that was originally
24 imposed. This could result in Defendant serving a total term of imprisonment greater
25 than the statutory maximum stated above.

26 Defendant understands that as a part of any sentence, in addition to any term of
27 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
28 restitution to any victim of the offense, as required by law.

1 Defendant further understands that the consequences of pleading guilty may
2 include the forfeiture of certain property, either as a part of the sentence imposed by the
3 Court, or as a result of civil judicial or administrative process.

4 Defendant agrees that any monetary penalty the Court imposes, including the
5 special assessment, fine, costs, or restitution, is due and payable immediately and further
6 agrees to submit a completed Financial Statement of Debtor form as requested by the
7 United States Attorney's Office.

8 Defendant understands that, if pleading guilty to a felony drug offense, Defendant
9 will become ineligible for certain food stamp and Social Security benefits as directed by
10 Title 21, United States Code, Section 862a.

11 **4. Immigration Consequences.** Defendant recognizes that pleading guilty
12 may have consequences with respect to Defendant's immigration status if Defendant is
13 not a citizen of the United States. Under federal law, a broad range of crimes are grounds
14 for removal, and some offenses make removal from the United States presumptively
15 mandatory. Removal and other immigration consequences are the subject of a separate
16 proceeding, and Defendant understands that no one, including Defendant's attorney and
17 the Court, can predict with certainty the effect of a guilty plea on immigration status.
18 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
19 immigration consequences that Defendant's guilty plea(s) may entail, even if the
20 consequence is Defendant's mandatory removal from the United States.

21 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
22 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

23 a. The right to plead not guilty and to persist in a plea of not guilty;
24 b. The right to a speedy and public trial before a jury of Defendant's
25 peers;
26 c. The right to the effective assistance of counsel at trial, including, if
27 Defendant could not afford an attorney, the right to have the Court appoint one for
28 Defendant;

1 d. The right to be presumed innocent until guilt has been established
2 beyond a reasonable doubt at trial;
3 e. The right to confront and cross-examine witnesses against Defendant
4 at trial;
5 f. The right to compel or subpoena witnesses to appear on Defendant's
6 behalf at trial;
7 g. The right to testify or to remain silent at trial, at which trial such
8 silence could not be used against Defendant; and
9 h. The right to appeal a finding of guilt or any pretrial rulings.

10 6. **United States Sentencing Guidelines.** Defendant understands and
11 acknowledges that the Court must consider the sentencing range calculated under the
12 United States Sentencing Guidelines and possible departures under the Sentencing
13 Guidelines together with the other factors set forth in Title 18, United States Code,
14 Section 3553(a), including: (1) the nature and circumstances of the offense(s); (2) the
15 history and characteristics of Defendant; (3) the need for the sentence to reflect the
16 seriousness of the offense(s), to promote respect for the law, and to provide just
17 punishment for the offense(s); (4) the need for the sentence to afford adequate deterrence
18 to criminal conduct; (5) the need for the sentence to protect the public from further
19 crimes of Defendant; (6) the need to provide Defendant with educational and vocational
20 training, medical care, or other correctional treatment in the most effective manner; (7)
21 the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the
22 need to avoid unwarranted sentence disparity among defendants involved in similar
23 conduct who have similar records. Accordingly, Defendant understands and
24 acknowledges that:

25 a. The Court will determine Defendant's Sentencing Guidelines range
26 at the time of sentencing;

1 b. After consideration of the Sentencing Guidelines and the factors in
 2 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
 3 maximum term authorized by law;

4 c. The Court is not bound by any recommendation regarding the
 5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
 6 range offered by the parties or the United States Probation Department, or by any
 7 stipulations or agreements between the parties in this Plea Agreement; and

8 d. Defendant may not withdraw a guilty plea solely because of the
 9 sentence imposed by the Court.

10 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
 11 guaranteed what sentence the Court will impose.

12 8. **Statement of Facts.** The parties agree on the following facts. Defendant
 13 admits Defendant is guilty of the charged offense:

14 a. On the night of November 28, 2020, a Burlington Northern Santa Fe
 15 (“BNSF”) officer received a motion alert from a game camera placed on the BNSF
 16 Bellingham Subdivision at milepost 100.4 in Whatcom County, Washington. He
 17 reviewed the photograph sent from the camera and observed a trespasser standing on the
 18 railroad tracks. He also observed either an item sitting on the tracks next to the person, or
 19 what appeared to be another trespasser kneeling on the tracks.

20 b. The officer accessed the BNSF system. He observed a “track
 21 indication” appear and disappear from the dispatch screen. The track indication appeared
 22 in the area where the game camera was placed, and the area where the trespasser was
 23 captured on the game camera. A “track indication” is the electronic signal that the track
 24 is obstructed, usually by a train. A railroad shunt can replicate this signal. A shunt
 25 consists, at a minimum, of wire stretched between and connected to the rails of a train
 26 track, which is designed to mimic the electrical signal presented by a train on the tracks.
 27 This signal prevents other trains from entering the area until the shunt has been located
 28 and removed. Depending on the location, the shunt may also interfere with the proper

1 operation of crossing gates at railroad/traffic intersections, causing the gates to allow
 2 vehicular traffic across the tracks even when a train is oncoming. Furthermore, there is
 3 the possibility that a shunt could cause Positive Train Control (“PTC”), an automatic
 4 braking system on modern trains, to engage, potentially resulting in a derailment.

5 c. A Whatcom County deputy responded to the scene. He observed an
 6 individual installing a shunt on the railroad tracks. SAM BROOKS had helped this
 7 individual attempt to install the shunt on the tracks, acting at the individual’s direction.
 8 The two acted with the intent to cause BNSF trains to delay operating. BNSF is an
 9 interstate rail carrier and operates in interstate commerce, *i.e.*, its trains transport cargo
 10 across state lines.

11 d. A BNSF engineer has examined the shunt that BROOKS and the
 12 other individual were installing. The shunt momentarily caused a track indication, *i.e.*,
 13 the system indicated that there was a train or other obstruction on the track, when in fact
 14 there was none. In addition, the shunt interfered with the Cliffside Drive railroad
 15 crossing. Specifically, for the moment that the shunt was operable, there would have
 16 been a delay had the crossing gate needed to be activated. This crossing is designed to
 17 initiate warning lights and begin lowering crossing gates when the train is 35 seconds
 18 from the crossing. Federal Rail Administration regulations require a minimum of 20
 19 seconds warning of an approaching train at road crossings. It takes around 11 seconds for
 20 the arms to lower completely. In this case, the gate would not have been triggered to
 21 lower until approximately 7 seconds prior to the train reaching the crossing, assuming the
 22 train was traveling at a normal speed of 35 mph, for the momentary period that the shunt
 23 was operable.

24 e. The section of track where the shunt was located is PTC-enabled.
 25 PTC will automatically apply the brakes of a train when there is an electrical indication in
 26 the track; however, based on the duration of time the indication persists, train dispatchers
 27 may clear trains to proceed over the indication. If a shunt causes an indication on the
 28

1 tracks when an oncoming train is a short distance away, PTC will activate emergency
2 braking, potentially leading to a decoupling or derailment.

3 f. The parties agree that the Court may consider additional facts
4 contained in the Presentence Report (subject to standard objections by the parties) and/or
5 that may be presented by the United States or Defendant at the time of sentencing, and
6 that the factual statement contained herein is not intended to limit the facts that the parties
7 may present to the Court at the time of sentencing.

8 9. **Sentencing Factors.** The parties agree that the following Sentencing
Guidelines provisions apply to this case:

10 a. The parties acknowledge that there is no Guideline expressly
11 applicable to conduct against railroad carriers not operating as mass transportation
12 vehicles, and that Section 2A5.2 provides the most analogous offense Guideline under
13 Section 2X5.1;

14 b. A base offense level of 18 because the conduct recklessly
15 endangered the safety of BNSF trains, pursuant to Section 2A5.2(a)(2);

16 c. A two-point reduction because the defendant played a minor role in
17 the offense, pursuant to Section 3B1.2(b).

18 The parties agree they are free to present arguments regarding the applicability of
19 all other provisions of the United States Sentencing Guidelines. Defendant understands,
20 however, that at the time of sentencing, the Court is free to reject these stipulated
21 adjustments, and is further free to apply additional downward or upward adjustments in
22 determining Defendant's Sentencing Guidelines range.

23 10. **Acceptance of Responsibility.** At sentencing, if the Court concludes
24 Defendant qualifies for a downward adjustment acceptance for acceptance of
25 responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or
26 greater, the United States will make the motion necessary to permit the Court to decrease
27 the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because
28 Defendant has assisted the United States by timely notifying the United States of

1 Defendant's intention to plead guilty, thereby permitting the United States to avoid
2 preparing for trial and permitting the Court to allocate its resources efficiently.

3 **11. Agreed Recommendation Regarding Imprisonment.** Pursuant to
4 Federal Rule of Criminal Procedure 11(c)(1)(B), the government agrees to recommend a
5 sentence at the low end of the applicable Guidelines range, as calculated by the Court.
6 Defendant is free to recommend any sentence. Defendant understands that this
7 recommendation is not binding on the Court and the Court may reject the
8 recommendation of the parties and may impose any term of imprisonment up to the
9 statutory maximum penalty authorized by law. Defendant further understands that
10 Defendant cannot withdraw a guilty plea simply because of the sentence imposed by the
11 Court. Except as otherwise provided in this Plea Agreement, the parties are free to
12 present arguments regarding any other aspect of sentencing.

13 **12. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
14 the United States Attorney's Office for the Western District of Washington agrees not to
15 prosecute Defendant for any additional offenses known to it as of the time of this Plea
16 Agreement based upon evidence in its possession at this time, and that arise out of the
17 conduct giving rise to this investigation. In this regard, Defendant recognizes the United
18 States has agreed not to prosecute all of the criminal charges the evidence establishes
19 were committed by Defendant solely because of the promises made by Defendant in this
20 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
21 Presentence Report, the United States Attorney's Office will provide the United States
22 Probation Office with evidence of all conduct committed by Defendant.

23 Defendant agrees that any charges to be dismissed before or at the time of
24 sentencing were substantially justified in light of the evidence available to the United
25 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
26 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
27 (1997).

1 **13. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 2 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 3 Agreement and Defendant may be prosecuted for all offenses for which the United States
 4 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 5 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 6 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 7 Defendant has waived any objection to the re-institution of any charges that previously
 8 were dismissed or any additional charges that had not been prosecuted.

9 Defendant further understands that if, after the date of this Agreement, Defendant
 10 should engage in illegal conduct, or conduct that violates any conditions of release or the
 11 conditions of confinement (examples of which include, but are not limited to, obstruction
 12 of justice, failure to appear for a court proceeding, criminal conduct while pending
 13 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 14 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 15 additional charges against Defendant or to seek a sentence that takes such conduct into
 16 consideration by requesting the Court to apply additional adjustments or enhancements in
 17 its Sentencing Guidelines calculations in order to increase the applicable advisory
 18 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 19 advisory Guidelines range. Under these circumstances, the United States is free to seek
 20 such adjustments, enhancements, departures, and/or variances even if otherwise
 21 precluded by the terms of the Plea Agreement.

22 **14. Waiver of Appellate Rights and Rights to Collateral Attacks.**
 23 Defendant acknowledges that, by entering the guilty plea(s) required by this plea
 24 agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
 25 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
 26 judgment of conviction. Defendant further agrees that, provided the Court imposes a
 27 custodial sentence that is within or below the Sentencing Guidelines range (or the
 28

1 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
2 Court at the time of sentencing, Defendant waives to the full extent of the law:

3 a. Any right conferred by Title 18, United States Code, Section 3742,
4 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
5 restitution order, probation or supervised release conditions, or forfeiture order (if
6 applicable); and

7 b. Any right to bring a collateral attack against the conviction and
8 sentence, including any restitution order imposed, except as it may relate to the
9 effectiveness of legal representation; and

10 This waiver does not preclude Defendant from bringing an appropriate motion
11 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
12 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in
15 any way, the United States may prosecute Defendant for any counts, including those with
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
17 Agreement.

18 **15. Voluntariness of Plea.** Defendant agrees that Defendant has entered into
19 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
20 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
21 Agreement or set forth on the record at the change of plea hearing in this matter.

22 **16. Statute of Limitations.** In the event this Plea Agreement is not accepted
23 by the Court for any reason, or Defendant breaches any of the terms of this Plea
24 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
25 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
26 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
27 of the Plea Agreement by Defendant is discovered by the United States Attorney's
28 Office.

17. Completeness of Agreement. The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties, except as may be set forth on the record at the change of plea hearing in this matter. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 1st day of July, 2021.

SAM BROOKS

Defendant

MICHELE SHAH

Attorney for Defendant

TODD GREENBERG

Assistant United States Attorney

THOMAS M. WOODS

Assistant United States Attorney